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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,445	10/30/2003	Eric T. Shuler	020824-006610US	2847
20350	7590	03/24/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			SUHOL, DMITRY	
		ART UNIT	PAPER NUMBER	
		3725		

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/699,445	SHULER ET AL.	
	Examiner Dmitry Suhol	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 January 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-70 is/are pending in the application.
 4a) Of the above claim(s) 10-16 and 48-60 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-9,17-47 and 61-70 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

Claims 10-16 and 48-60 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/03/2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 17-27, 32-47, 61-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heit '503 in view of Wood '980 and Pridgen '175. Heit discloses an interactive educational toy apparatus containing most of the claimed elements including, 3-D indicium containing structures (20), a base unit (28) having a housing (figure 2), a receiving region (top region of base unit 28, figure 2), a processor unit in the housing (col. 4, lines 1-6), a speaker coupled to the processor unit (speaker 26), a reader coupled to the processor unit (reader 47). Limitations of claims 4-6, 24-26 are described in col. 3, lines 12-22. A window, as required by claim 7, is described in col. 8, lines 1-9. A memory unit, as required by claims 17, 37 and 61, is shown as data storage unit 23

and further described in col. 9, lines 30-45. Limitations of claims 18-20, 32-35, 38-43, 46-47, 64-67, 69 are shown in figure 2 and described in col. 3, lines 1-11 and col. 9, lines 30+. Limitations of claim 45, are encompassed in col. 9, lines 42-45 where a floppy disk is considered to be the removable cartridge. A code readable by the reader, as required by claims 62-63, is described in col. 5, lines 4-45.

Heit lacks the teaching of a first and second attachment element as required by claims 1, 17, 21, 37 and 61, where the attachment elements are magnets as required by claims 2, 17, 22, 44. Heit further lacks the explicit teaching of use of phonetic pronunciations as required by claim 20, 35, 40, and 70. However, Wood '980 discloses a device like that of Heit which teaches that it is known to provide an indicium containing structure which uses magnets to attach the structure to the base unit (col. 3-4, lines 67 and 1, respectively) where the device produces a plurality of auditory information in response to the elements placed on a base including phonetic sounds/pronunciations (cols. 1-2, lines 66+ and lines 1-9). Therefore it would have been obvious to one having ordinary skill in the art to include a first attachment element with the indicium structure of Heit for the purpose of holding the indicium structure (20) on the base unit (28). It would have been further obvious to include phonetic pronunciations/sounds associated with the elements of Heit in his device for the purpose of establishing a relationship between the symbols of letters, numbers or other indicia on the elements (20) to the sounds and names associated with the symbols to promote education through fun.

Pridgen is relied upon to teach that the use of magnetic attachment elements to support a language teaching unit on a vertical surface (col. 2, lines 1-5 and 41-44) in

order to teach language to a child user is known. Therefore it would have been obvious to utilize a magnet as an attachment element in the device of Heit for the purpose of supporting the unit on a vertical surface in order to teach language to a child user and in order that the toy is not mishandled by users with limited dexterity.

Regarding the limitations of claim 68, Heit clearly teaches that his device may have a discreet number of locations for receiving the plurality of indicium structures (col. 8, lines 1-19) since such structure would greatly reduce the possibility of the reader and/or sensor detecting more than one particular block. Therefore providing two indicium receiving locations locations would certainly be obvious in the device of Heit.

Claims 8-9 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heit '503, Wood '980 and Pridgen '175, as stated above, and further in view of Lee et al '255. Heit, as modified by Prigen and Wood, discloses most of the claimed elements as stated above, and further including that the indicium back structure may cooperate with the work surface of base (28) through a variety of means (col. 5, lines 4-6 and 43-45). Lee discloses an interactive educational device, like that of Heit, which teaches that it is known to utilize a structural code on indicium containing structures (figure 4) in order to depress upwardly biased depressible switches (45). Therefore it would have been obvious to utilize the structural code and upwardly biased depressible switches in the device of Heit since Heit states that his indicium identification means may be of any know technologies (col. 5, lines 4-6 and 43-45).

Response to Arguments

Applicant's arguments with respect to claims 1-9, 17-47, 61-70 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dmitry Suhol
Primary Examiner
Art Unit 3725

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